

99TH CONGRESS
1ST SESSION

H. R. 271

To amend the National Security Act of 1947 to establish by law procedures for the classification and protection of sensitive information relating to the national security, to provide criminal penalties for unauthorized disclosure of such information, to limit matters that may be classified and impose penalties for unauthorized classification, to provide for declassification, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1985

Mr. BENNETT introduced the following bill; which was referred jointly to the Committee on Armed Services and the Permanent Select Committee on Intelligence

A BILL

To amend the National Security Act of 1947 to establish by law procedures for the classification and protection of sensitive information relating to the national security, to provide criminal penalties for unauthorized disclosure of such information, to limit matters that may be classified and impose penalties for unauthorized classification, to provide for declassification, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That (a) the National Security Act of 1947 is amended by*
- 4 *adding at the end thereof the following new title:*

1 "TITLE V—CLASSIFICATION AND SAFEGUARD-
2 ING OF NATIONAL SECURITY INFORMATION

3 "PURPOSE

4 "SEC. 501. The purpose of this title is to establish pro-
5 cedures for the protection against unauthorized disclosure of
6 information and material relating to the national security that
7 is of such a nature that the unauthorized disclosure of such
8 information or material could cause identifiable damage to
9 the national security and to provide criminal penalties for the
10 unauthorized disclosure of such information and material.

11 "AUTHORITY FOR CLASSIFICATION OF NATIONAL
12 SECURITY INFORMATION

13 "SEC. 502. (a) Except as provided in the Atomic
14 Energy Act of 1954, national security information may be
15 designated and protected against unauthorized disclosure
16 only in accordance with this title. The authority to originate
17 the classification of national security information may be ex-
18 ercised only by an official designated under section 503 to
19 have such authority and shall be exercised in accordance with
20 the provisions of section 504.

21 "(b) There shall be three categories of classification by
22 which national security information may be designated, and,
23 except as otherwise expressly provided by law, no other cate-
24 gory or degree of classification shall be used to identify or
25 protect national security information. The three categories of

1 officials as may be designated to have such authority in ac-
2 cordance with subsection (b)(1).

3 “(2) The authority to originate the classification of na-
4 tional security information as ‘Secret’ may be exercised only
5 by officials who have authority to originate the classification
6 of information as ‘Top Secret’, by such other officials in the
7 executive branch of the Government as the President may
8 designate by publication in the Federal Register to have such
9 authority, and by such officials as may be designated to have
10 such authority in accordance with subsection (b)(2).

11 “(3) The authority to originate the classification of na-
12 tional security information as ‘Confidential’ may be exercised
13 only by officials who have authority to originate the classifi-
14 cation of information as ‘Secret’, by such other officials in the
15 executive branch of the Government as the President may
16 designate by publication in the Federal Register to have such
17 authority, and by such officials as may be designated to have
18 such authority in accordance with subsection (b)(3).

19 “(b)(1) Any principal subordinate official of an official
20 designated by the President under subsection (a)(1) to have
21 authority to originate the classification of information as ‘Top
22 Secret’ may be designated by such official to have such au-
23 thority, if such subordinate official has a frequent need to
24 exercise such authority, as determined by the President or by
25 the official making the designation.

1 “(2) Any subordinate official of an official who (A) has
2 authority to designate information as ‘Top Secret’, or (B) is
3 designated by the President under subsection (a)(2) to have
4 authority to designate information as ‘Secret’ may be desig-
5 nated by such official to have such authority if such subordi-
6 nate official has a frequent need to exercise such authority, as
7 determined by the President, by the head of such official’s
8 agency, or by the official making the designation.

9 “(3) Any subordinate official of an official who (A) has
10 authority to designate information as ‘Secret’, or (B) is desig-
11 nated by the President under subsection (a)(3) to have
12 authority to designate information as ‘Confidential’ may be
13 designated by such official to have such authority if such sub-
14 ordinate official has a frequent need to exercise such author-
15 ity, as determined by the President, by the head of such offi-
16 cial’s agency, or by some other official having authority to
17 originate the classification of information as ‘Top Secret’.

18 “(4) Each designation under this subsection of an official
19 to have authority to originate the classification of information
20 shall be made in writing and shall state the name or position
21 of the official being designated to exercise such authority.

22 “(c) It is the policy of the Congress that the number of
23 designations under subsection (b) of subordinate officials to
24 have authority to originate the classification of information
25 should be kept to the smallest number practicable. To carry

1 out this policy, periodic reviews of such designations shall be
2 made to determine whether officials so designated have a
3 continuing need to exercise such authority.

4 “(d) The President shall prescribe regulations to provide
5 procedures for the handling and classification of national se-
6 curity information that is originated by an agency that does
7 not have an official with authority to classify such
8 information.

9 “STANDARDS FOR CLASSIFICATION

10 “SEC. 504. (a) Information may not be classified unless
11 unauthorized disclosure of such information reasonably could
12 be expected to cause at least identifiable damage to the na-
13 tional security and unless such information concerns—

14 “(1) military plans, weapons, or operations;

15 “(2) information that is furnished to the United
16 States by a foreign government or international organi-
17 zation and that has been designated by such foreign
18 government or international organization as requiring
19 protection against unauthorized disclosure;

20 “(3) intelligence activities, sources, or methods;

21 “(4) the foreign relations or foreign activities of
22 the United States;

23 “(5) scientific, technological, or economic matters
24 relating to the national security;

1 “(6) programs of the United States Government
2 for safeguarding nuclear materials or facilities; or

3 “(7) some other category of information related to
4 the national security and requiring protection against
5 unauthorized disclosure, as determined by the Presi-
6 dent, by an official designated by the President under
7 section 505(a)(1), or by an official who is the head of
8 an agency.

9 “(b) The unauthorized disclosure of information de-
10 scribed in subsection (a)(2) or of information revealing the
11 identity of a confidential foreign intelligence source may be
12 presumed to cause at least identifiable damage to the national
13 security.

14 “(c)(1) Information may not be classified in order to con-
15 ceal violations of law, incompetence, inefficiency, wrongdo-
16 ing, or administrative error, to avoid embarrassment to any
17 person or agency, to restrain competition or independent ini-
18 tiative, or to prevent for any other reason the release of infor-
19 mation that does not require protection in the interest of na-
20 tional security. Any official who classifies information in vio-
21 lation of this subsection shall be subject to such administra-
22 tive disciplinary action, including suspension, as may be or-
23 dered by such official's superiors.

24 “(2) Basic scientific research information not clearly re-
25 lated to the national security may not be classified.

1 “(3) Material containing a reference to classified infor-
2 mation which reference does not itself reveal classified infor-
3 mation may not be classified by reason of such reference or
4 be used as a basis for classification.

5 “(d) Whenever there is reasonable doubt as to which
6 category of classification should be applied, the less restric-
7 tive category should be used. Whenever there is reasonable
8 doubt as to whether information should be classified at all,
9 the information should not be classified.

10 “IDENTIFICATION OF CLASSIFIED MATERIAL

11 “SEC. 505. (a) Each item of classified material shall
12 show on its face—

13 “(1) the category of classification of such material;

14 “(2) the identity of the official authorizing the
15 original classification of such material;

16 “(3) the office which originated the classification
17 of such material;

18 “(4) the dates of the preparation and of the classi-
19 fication of such material; and

20 “(5) whether such material is subject to declassifi-
21 cation at a particular time and, if so, when.

22 “(b) There shall be clearly indicated on the face of each
23 item of classified material or by other appropriate means
24 which portions of such material are classified and which por-
25 tions are not classified, together with the degree of classifica-

tion of those portions which are classified. The President shall waive the requirements of the preceding sentence for those portions of classified classes of material.

“(c) Information that is furnished to the United States by a foreign government or international organization that has been designated by such foreign government or international organization as requiring protection against unauthorized disclosure shall either retain its original classification or be assigned a category of classification under the same title, and in either case shall be assured a degree of protection equivalent to that required by the foreign government or international organization furnishing such information.

“(d) A holder of classified information shall observe and respect the classification assigned to such information by the originator of such classification. If a holder of classified information believes that such information should not be so classified, that the classification which has been assigned to such information is improper, or that such information is no longer requires declassification under applicable regulations, such holder shall so inform the originator of the classification of such information, who shall promptly reexamine such classification.

“DECLASSIFICATION POLICY AND REGULATIONS

“SEC. 5053. (a) It is the policy of the Congress that the classification of classified information shall be given a degree of protection comparable to that accorded classification of national

1 information. Information classified under this title or under a
 2 prior Executive order authorizing the classification of nation-
 3 al security information shall be declassified as early as con-
 4 siderations of national security allow.

5 “(b) The President shall prescribe regulations to estab-
 6 lish procedures for the systematic and periodic review of all
 7 classified information for the purpose of downgrading the
 8 classification of such information, or of declassifying, transfer-
 9 ring, retiring, or destroying such information, as may be ap-
 10 propriate in each case, at the earliest practicable date. In
 11 determining whether information should be declassified, the
 12 public interest in disclosure of the information shall be consid-
 13 ered and weighed against the need for continued classification
 14 of the information.

15 “IMPLEMENTING REGULATIONS

16 “SEC. 507. (a) The President shall prescribe regulations
 17 to carry out this title. Such regulations shall include provi-
 18 sions to ensure that—

19 “(1) any person given access to classified informa-
 20 tion (A) has been determined to be trustworthy, and
 21 (B) requires access to such information in the perform-
 22 ance of official duties;

23 “(2) all classified material is appropriately and
 24 conspicuously marked so as to put any person coming

11

1 in contact with such material on clear notice that the
2 contents of such material are classified;

3 "(3) classified information is used, possessed,
4 stored, reproduced, and transmitted only under condi-
5 tions that will prevent access to such information by
6 persons not specifically authorized to have such access
7 and that will prevent dissemination of such information
8 to persons not specifically authorized to receive it;

9 "(4) classified information disseminated outside
10 the executive branch is given protection equivalent to
11 that afforded within the executive branch;

12 "(5) appropriate records to assure accountability
13 for all classified information are established and main-
14 tained and that classified information is adequately pro-
15 tected during all transmissions of such information; and

16 "(6) classified information no longer needed in
17 current working files or for reference or record pur-
18 poses is destroyed or otherwise disposed of in accord-
19 ance with chapter 33 of title 44, United States Code
20 (relating to disposal of records).

21 "(b) The President may waive the requirement in sub-
22 section (a)(1) that access to classified information be limited
23 to persons requiring access to such information in the per-
24 formance of official duties with respect to such persons and
25 classes of persons as the President may prescribe.

1 **"MATERIAL COVERED BY THE ATOMIC ENERGY ACT OF**

2 **1954**

3 **"SEC. 508. Nothing in this title shall supersede any re-**
4 **quirement made by or under the Atomic Energy Act of 1954.**
5 **Material designated as 'Restricted Data' and material desig-**
6 **nated as 'Formerly Restricted Data' shall be handled, pro-**
7 **ected, classified, downgraded, and declassified in conformity**
8 **with the provisions of the Atomic Energy Act of 1954.**

9 **"UNAUTHORIZED DISCLOSURE OF CLASSIFIED**
10 **INFORMATION**

11 **"SEC. 509. (a) Any individual who knowingly communi-**
12 **cates classified information which that individual knows or**
13 **has reason to know is classified information to a foreign gov-**
14 **ernment or foreign organization or to any officer or agent**
15 **thereof not authorized to receive such information shall be**
16 **imprisoned for any term of years or for life.**

17 **"(b) Any individual who (1) is or has been in authorized**
18 **possession or control of classified information, or (2) is or has**
19 **been an officer or employee of the United States, a member**
20 **of the Armed Forces of the United States, a contractor of the**
21 **United States Government, or an employee of a contractor of**
22 **the United States Government, and is or has been in posses-**
23 **sion or control of classified information in the course of that**
24 **relationship, knowingly communicates such information to a**

1 person not authorized to receive it shall be fined not
2 than \$10,000 or imprisoned not more than ten years, or

3 “(c) Any individual who knowingly communicate
4 sified information which that individual knows or has
5 to know is classified information to a person not author
6 receive it shall be fined not more than \$5,000 or imp
7 not more than one year, or both. Nothing in this sub
8 shall be construed to infringe rights or liberties guar
9 under the Constitution or laws of the United States.

10 “(d) It is a defense to a prosecution under subsec
11 or (c) that—

12 “(1) before the commission of the offense
13 which the defendant is charged, the information
14 communicated had been publicly disclosed;

15 “(2) the information communicated was r
16 fully classified at the time of the offense with
17 the defendant is charged; or

18 “(3) the information communicated was co
19 cated only to a regularly constituted subcom
20 mittee, or joint committee of Congress, pur
21 lawful demand.

22 “(e) In making a determination as to whether t
23 mation communicated was lawfully classified at the
24 the offense with which the defendant is charged, t
25 shall determine the matter and shall examine such

1 tion in camera. In any such determination, the burden is on
2 the United States to sustain the classification of such infor-
3 mation. After any in camera examination under this subsec-
4 tion, the court shall enter into the record its findings and
5 determinations with respect to whether the information com-
6 municated was lawfully classified at the time of the offense
7 with which the defendant is charged. Any determination by
8 the court under this subsection shall be a question of law.

9 “(f)(1) Whenever any person is about to engage in con-
10 duct that would constitute a violation of this section, the At-
11 torney General, on behalf of the United States, may apply to
12 the appropriate court for an order enjoining such conduct,
13 and upon a showing that a person is about to engage in such
14 conduct, a permanent or temporary injunction, temporary re-
15 straining order, or other order may be granted.

16 “(2) In making a determination as to whether a viola-
17 tion of this section is about to occur, the court shall examine
18 the information that is the subject of the possible violation
19 and shall not grant relief under this subsection if the informa-
20 tion is not lawfully classified. Examination of the contents of
21 such information shall be conducted in camera. In any such
22 determination, the burden is on the United States to sustain
23 the classification of such information. After an in camera ex-
24 amination under this subsection, the court shall enter into the

15

1 record its findings and determinations with respect to wheth-
2 er the information is lawfully classified.

3 “(g) For the purposes of this section:

4 “(1) The term ‘classified information’ means infor-
5 mation that is designated as information that—

6 “(A) has been classified under this title;

7 “(B) was classified before the effective date
8 of this title under an Executive order; or

9 “(C) was furnished to the United States by a
10 foreign government or international organization
11 and was designated by such foreign government
12 or international organization as requiring protec-
13 tion against unauthorized disclosure.

14 “(2) The term ‘communicates’ means to impart,
15 transfer, publish, or otherwise make available.

16 “(3) The term ‘authorized’, when used in relation
17 to the possession, receipt, or control of classified infor-
18 mation, means with legal authority to have access to,
19 to possess, to receive, or to control such information.

20 “(4) The term ‘lawfully classified’, when used in
21 relation to classified information, means—

22 “(A) in the case of information classified on
23 or after the effective date of this title, that such
24 information—

16

1 “(i) is specifically authorized under the
2 criteria established by section 504 to be clas-
3 sified;

4 “(ii) is in fact properly classified and
5 identified in accordance with the criteria es-
6 tablished by sections 504 and 505 and regu-
7 lations issued under section 507; and

8 “(iii) was classified by an official author-
9 ized under section 503 to make such a clas-
10 sification;

11 “(B) in the case of information classified
12 before the effective date of this title, that such in-
13 formation—

14 “(i) is specifically authorized under cri-
15 teria established by an Executive order to be
16 protected from unauthorized disclosure in the
17 interest of the national security;

18 “(ii) is in fact properly classified under
19 the criteria and procedures established by
20 such Executive order; and

21 “(iii) was classified by a person author-
22 ized by statute, Executive order, or regula-
23 tion to make such a classification; and

24 “(C) in the case of information designated as
25 information which (i) was furnished to the United

1 States by a foreign government or international
2 organization, and (ii) was designated by such for-
3 eign government or international organization as
4 requiring protection against unauthorized disclo-
5 sure, that such information was in fact furnished
6 to the United States by a foreign government or
7 international organization and was in fact desig-
8 nated by such foreign government or international
9 organization as requiring protection from unau-
10 thorized disclosure.

11 "PENALTY FOR IMPROPER CLASSIFICATION

12 "SEC. 510. Whoever classifies information in order to
13 conceal incompetence, inefficiency, wrongdoing, or adminis-
14 trative error, to avoid embarrassment to any individual or
15 agency, to restrain competition or independent initiative, or
16 to prevent or delay for any reason the release of information
17 which does not bear directly on the effectiveness of the na-
18 tional defense or the conduct of foreign relations shall be
19 fined not more than \$1,000 or imprisoned not more than one
20 year, or both.

21 "DEFINITIONS

22 "SEC. 511. For purposes of this title:

23 "(1) The term 'national security information'
24 means information and material that is owned by, pro-
25 duced for or by, or under the control of the United

1 States Government and that requires protection against
2 unauthorized disclosure for reasons of the national se-
3 curity.

4 "(2) The term 'national security' means the na-
5 tional defense or foreign relations of the United States.

6 "(3) The term 'information' includes material con-
7 taining information.

8 "(4) The term 'agency' means any executive de-
9 partment, military department, Government corpora-
10 tion, Government-controlled corporation, or other es-
11 tablishment in the executive branch of the Government
12 (including the Executive Office of the President), or
13 any independent regulatory agency."

14 (b) The table of contents at the beginning of the Nation-
15 al Security Act of 1947 is amended by adding at the end
16 thereof the following:

"TITLE V—CLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY
INFORMATION

"Sec. 501. Purpose.

"Sec. 502. Authority for classification of national security information.

"Sec. 503. Officials with authority to classify national security information.

"Sec. 504. Standards for classification.

"Sec. 505. Identification of classified material.

"Sec. 506. Declassification policy and regulations.

"Sec. 507. Implementing regulations; standards.

"Sec. 508. Material covered by the Atomic Energy Act of 1954.

"Sec. 509. Unauthorized disclosure of classified information.

"Sec. 510. Penalty for improper classification.

"Sec. 511. Definitions."

17 SEC. 2. The amendments made by the first section of
18 this Act shall take effect at the end of the ninety-day period
19 beginning on the date of the enactment of this Act.